Robert N. Michaelson
RICH MICHAELSON MAGALIFF MOSER, LLP
335 Madison Avenue, 9th Floor
New York, NewYork 10017
646.451.7851

Proposed Counsel for the Debtor

Hearing Date and Time:
April 28, 2016 at 10:30 a.m.

Objection Deadline:
April 21, 2016 at 5:00 p.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	
	Chapter 11
UBB PROJECT LLC *dba* ROOMR,	Case No. 16-40590 (ESS)
Debtor.	

NOTICE OF HEARING ON DEBTOR'S APPLICATION FOR ORDER (i) AUTHORIZING THE RETENTION AND SUBSTITUTION OF RICH MAICHAELSON MAGALIFF MOSER LLP AS COUNSEL FOR THE DEBTOR, EFFECTIVE AS OF APRIL 5, 2016, AND (ii) AUTHORIZING THE DEBTOR TO PAY A POST-PETITION RETAINER

PLEASE TAKE NOTICE that hearing to consider the the annexed *Proposed Order and Application for Order (i) Authorizing the Retention and Substitution of Rich Michaelson Magaliff Moser LLP as Counsel for the Debtor, Effective as of April 5, 2016, and (ii) Authorizing the Debtors to Pay a Post-Petition Retainer* (the "Application"), will be heard before the Honorable Elizabeth S. Stong, United States Bankruptcy Judge, 271 Cadman Plaza East, Brooklyn, New York 11201, on April 28, 2016 at 10:30 a.m.

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the Order must be made in writing, conform to the Federal Rules of Bankruptcy Procedure and be filed with the Bankruptcy Court electronically by registered users of the Bankruptcy Court's case filing system (the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) and, by all other parties in interest, on a 3.5 inch disk, in text-searchable Portable Document Format (PDF), Word, Wordperfect or any other Windows-based word processing format (in either case, with a hard copy delivered to Chambers), and be served upon: (i) Rich Michaelson Magaliff Moser LLP, proposed counsel for the Debtor, 335 Madison Avenue, 9th Floor, New York, NY 10017, Attn: Robert N. Michaelson, Esq.; and (ii) Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, New York 10014, Attn: Marylou Martin, Esq., so as to be actually received no later than April 21, 2016, at 5:00 PM. Only objections made in writing and timely filed and received will be considered by the Bankruptcy Court.

Dated: New York, New York
April 7, 2016

RICH MICHAELSON
MAGALIFF MOSER, LLP
Proposed Counsel for the Debtor

By: /s/ *Robert N. Michaelson*
Robert N. Michaelson
335 Madison Avenue – 9th Floor
New York, New York 10017
646.453.7851

Robert N. Michaelson
RICH MICHAELSON MAGALIFF MOSER, LLP
335 Madison Avenue , 9th Floor
New York, New York 10017
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Proposed Counsel for the Debtor

Hearing Date and Time:
April 28, 2016 at 10:30 a.m.
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April 21, 2016 at 5:00 p.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	
	Chapter 11
UBB PROJECT LLC *dba* ROOMR,	Case No. 16-40590 (ESS)
Debtor.	

DEBTOR'S APPLICATION FOR ORDER (i) AUTHORIZING THE RETENTION AND SUBSTITUTION OF RICH MICHAELSON MAGALIFF MOSER LLP AS COUNSEL FOR THE DEBTOR, EFFECTIVE AS OF APRIL 5, 2016, AND (ii) AUTHORIZING THE DEBTOR TO PAY A POST-PETITION RETAINER

TO THE HON. ELIZABETH S. STONG,
UNITED STATES BANKRUPTCY JUDGE:

UBB Project LLC (the "Debtor") respectfully submits this Application for an order authorizing (i) the retention and substitution of Rich Michaelson Magaliff Moser Magaliff LLP (the "Firm") as its general bankruptcy counsel, effective as of April 5, 2016; and (ii) the Debtor to pay a post-petition retainer. In support of this Application, the Debtor states:

Background

1. On February 12, 2016, the Debtor filed a voluntary petition for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code") with this Court. The

Debtor is authorized to operate its business and manage its affairs as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee or creditors' committee has been appointed in this case.

3. Tanner Bryce Jones, Esq. currently represents the Debtor. No order has been entered authorizing his retention.

4. The Debtor has selected the Firm as its bankruptcy counsel, and the Firm has agreed to be substituted for Mr. Jones as counsel on the terms and conditions set forth in this Application. For the reasons set forth below, the Debtor requests that the Court approve the retention of the Firm and authorize the Debtor to pay a post-petition retainer in the amount of $20,000.

Relief Requested

5. The Debtor requests the entry of an order, in the form attached as Exhibit 2, authorizing it to retain the Firm and to pay a retainer, pursuant to sections 327(a), 328(a) and 363(b) of the Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure.

A. Services Required

6. The Firm has agreed to be retained as counsel for the Debtor to perform all necessary and required series, including to:

(a) Respond to various motions and adversary proceedings that have been filed;

(b) Advise and assist the Debtor with the preparation and filing of its Schedules of Assets and Liabilities and Statement of Affairs;

(c) Advise and assist the Debtor with the preparation and filing of monthly operating reports;

(d) Take necessary action to protect and preserve the Debtor's estate;

(e) Advise the Debtor of its rights, powers, and duties as a debtor-in-possession under chapter 11 of the Bankruptcy Code;

(f) Prepare on behalf of the Debtor, motions, applications, amendments to schedules, answers, orders, reports and papers necessary to the administration of the estate;

(g) Advise the Debtors in reviewing, estimating, and resolving claims asserted against the estates;

(h) Advise the Debtors about the possible sale of certain of its properties;

(i) Prepare and file a chapter 11 plan and disclosure statement;

(j) Appear before this Court and any appellate courts to protect the interests of the Debtor and its estate; and

(k) Perform other necessary legal services and provide other necessary legal advice to the Debtor in connection with its chapter 11 case.

7. Lena Sklyut, the Debtor's principal, first contacted the Firm in March, 2016, to discuss the possibility of retaining the Firm as substitute chapter 11 counsel. The Firm reviewed the docket and pending matters, reviewed the petition and schedules to educate itself about the case, the services that would be required and the timing. After satisfying itself that there were no conflicts with the proposed representation, the Firm informed Ms. Sklyut that it would be willing to represent the Debtor, subject to and contingent upon the Court approving the payment of a post-petition retainer in the amount of $20,000, to be applied to fees and expenses as approved by the Court. The Debtor agreed to these terms of the Firm's retention.

B. Qualifications of the Firm

8. The Firm specializes in the practice of bankruptcy and corporate restructuring, including bankruptcy and general commercial litigation, and insolvency law. The members of the Firm have represented chapter 11 debtors, committees and trustees in numerous cases in this district and other districts throughout the United States.

9. The Firm is willing to act in this chapter 11 case and render the necessary professional services as attorneys for the Debtor under a general retainer. To the best of the Debtor's knowledge, the attorneys of the Firm do not have any connection with or any interest adverse to the Debtor, its creditors or any other party in interest, as set forth in the Declaration of Robert N. Michaelson dated April 7, 2016 (the "Michaelson Declaration"), attached as Exhibit 1. The Firm is not a creditor of the Debtors. As such, the Firm is a "disinterested person," as that term is defined in section 101(14) of the Bankruptcy Code and as modified by section 1107(b) of the Bankruptcy Code.

10. The Firm has represented to the Debtor that it has not represented and will not represent any parties other than the Debtor in its chapter 11 case or in connection with any matters that would be adverse to the Debtor arising from, or related to, its case.

11. The Debtor has been informed that the Firm will conduct an ongoing review of its files to ensure that no disqualifying circumstances arise, and if any new relevant facts or relationships are discovered, the Firm will supplement its disclosure to this Court.

C. A Post-Petition Retainer is Appropriate

12. "The payment of a post-petition retainer, while generally not looked upon with favor by bankruptcy courts, is not prohibited by the Bankruptcy Code. The Bankruptcy Code does not dictate a strict and rigid framework for professionals' compensation." *In re Jefferson Business Center Assoc.*, 135 B.R. 676, 679 (Bankr. D. Colo. 1992). The *Jefferson Business Center* court stated:

> *§ 328. Limitation on compensation of professional persons.*
>
> (a) The trustee … with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title … on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis … 11 U.S.C. § 328(a). Rather, the provisions for employment and payment of a debtor's counsel in Chapter 11 are flexible and practical. 11 U.S.C. §§ 327-331 and 503(b)(2). [fn. omitted]. A determination of whether, and in what amount, a retainer should be paid is best left to the parties and the discretion of the Court. Such a determination must be made on a case-by-case basis. In that process, "the burden to establish that proposed terms and conditions of professional employment proposed in a bankruptcy case are reasonable is on the moving party." *In re NBI, Inc.*, 129 Bankr. 212, 219 (Bankr. D.Colo. 1991).
>
> In determining whether a post-petition retainer in Chapter 11 is justified, the Court must consider several recognized factors, [fn. omitted] plus special factors which include, but are not necessarily limited to: (1) the retainer's economic impact on the debtor's ongoing business operation; (2) the retainer's economic impact on the ability of the debtor to reorganize; (3) the amount and reasonableness of the retainer; (4) the reputation of debtor's counsel; and (5) the ability of debtor's counsel to disgorge such payments at the conclusion of the case should this Court determine that the fees paid to counsel are not justified. Further, the Court should also take into account, particularly under the circumstances of the case before it, the fact that the Debtor's current bankruptcy counsel is substitute counsel for the Debtor and has recently established a new law practice. Coupled with these considerations in weighing the propriety of a post-petition retainer

> is this Court's belief that competent counsel is imperative for a debtor to successfully attempt reorganization in Chapter 11.

Jefferson Business Center, 135 B.R. at 679-80; *see also In re Troung,* 259 B.R. 264, 268 (Bankr. D.N.J. 2001).

13. The Debtor submits that the current circumstances warrant payment of a post-petition retainer to the Firm under the preceding factors.

14. First, the Debtor understands that if it had hired the Firm pre-petition, it would have paid a retainer to cover pre-petition services to prepare for the filing, with the balance to be applied to the Firm's administrative fees earned post-petition, which the Debtor understands is a usual practice of the Firm. The Debtor does not believe that the Firm should be treated differently merely because it has agreed to come into the case post-petition faced with a number of pressing issues, the resolution of which are critical to a successful reorganization.

15. Turning to the *Jefferson Business Center* factors, the Debtor believes they are satisfied in this case.

16. The Debtor believes that the amount of the retainer is appropriate in the particular circumstances of the case. The Debtor understands that the Firm will be devoting substantial time and effort to this case to properly position the case administratively and to enable the Debtor to confirm a plan. The Debtor believes that it has or will assets sufficient to confirm a plan. The Debtor agreed to pay the retainer to minimize the risk of non-payment to the firm in consideration of the services to be provided.

17. The Firm is a knowledgeable and experienced firm whose lawyers regularly practice in this Court. The Debtor believes that the firm and its members have an excellent reputation representing debtors in chapter 11 cases.

18. The Debtor believes that the last *Jefferson* factor – disgorgement – is not relevant in these circumstances. There is no practical difference between drawing against a pre-petition retainer for fees and one given post-petition. Final fees are always subject to the standards of section 330 of the Bankruptcy Code, and the possibility of disgorgement is always present.

19. The *Troung* court's observation when it approved counsel's post-petition retainer in that case is particularly germane here:

> [B]y retaining counsel, the debtors … will gain the advice and guidance which will increase their prospect of reorganization. … [T]he specific amount of the retainer is not extraordinary when balanced against the services which must be rendered. … [I]t is clear from the examination of the record that while this case involves an individual debtor rather than a corporation, it has a level of complexity that demands experienced bankruptcy counsel. Proposed counsel is an experienced bankruptcy practitioner and in measuring facts of this case against the criteria set forth in *Jefferson*, the Court finds that the complexity of this case and the need for counsel to cure the deficiencies in the case and to devise a feasible plan of reorganization warrant the payment of a post-petition retainer. Finally, counsel is not requesting that he be permitted to draw against the retainer prior to allowance of compensation by the Court. Thus, the Court's ability to oversee payment of fees is fully preserved.

In re Troung, 259 B.R. at 268.

20. Section 328(a) of the Bankruptcy Code provides that "[t]he trustee … with the court's approval, may employ or authorize the employment of a professional person

under section 327 or 1103 of this title … on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis …" 11 U.S.C. § 328(a). Section 363(b) authorizes the Debtor to use assets of the estate, other than in the ordinary course of business – here, to pay the retainer – after notice and a hearing.

Notice

21. The Debtor has given notice of this Application and the proposed order to the United States Trustee and the 20 largest unsecured creditors. The Debtor submits that such notice is sufficient under the circumstances.

22. The Debtor has not made a prior application for the relief requested to this or any other Court.

WHEREFORE, the Debtor requests the entry of the attached order and such other and further relief as is appropriate.

Dated: Brooklyn, New York
April 7, 2016

UBB PROJECT LLC

By: /s/ *Lena Sklyut*
Lena Sklyut

RICH MICHAELSON MAGALIFF MOSER, LLP
Proposed Counsel for the Debtor

By: /s/ *Robert N. Michaelson*
Robert N. Michaelson
335 Madison Avenue, 9th Floor
New York, New York 10017
646.453.7851

NO OBJECTION:

Office of the United States Trustee

By: /s/ *Marylou Martin*

EXHIBIT 1

Robert N. Michaelson
RICH MICHAELSON MAGALIFF MOSER, LLP
335 Madison Avenue, 9th Floor
New York, NewYork 10017
646.451.7851

Proposed Counsel for the Debtor

Hearing Date and Time:

Objection Deadline:

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	
	Chapter 11
UBB PROJECT LLC *dba* ROOMR,	Case No. 16-40590 (ESS)
Debtor(s).	

DECLARATION OF ROBERT N. MICHAELSON

I, Robert N. Michaelson, declare pursuant to 28 U.S.C. § 1746 that the following is true to the best of my knowledge, information and belief:

1. I am a partner of Rich Michaelson Magaliff Moser LLP (the "Firm"), located at 335 Madison Avenue, 9th Floor, New York, New York 10017. I am a member in good standing of the Bar of the State of New York and am admitted to practice in the Eastern District of New York.

2. I am in all respects competent to make this Declaration in support of the application (the "Application")[1] of UBB Project, LLC (the "Debtor") for an order authorizing the retention and substitution of the Firm as its general bankruptcy counsel, effective as of April 5, 2016. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.

[1] Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Application.

3. To the best of my knowledge, after due inquiry, neither I, my firm, nor any partner or counsel of my firm has any connection with or any interest adverse to the Debtor, its creditors or any other party in interest. The Firm, while employed by Debtor, will not represent any individual creditor in any capacity in connection with this case. I know of no reason why this firm cannot act as the Debtor's counsel in this case.

4. Additionally, neither I, my firm, any member of my firm or any attorney who is "of counsel" to the firm, insofar as I have been able to ascertain:

a. is a relative of the Debtor;

b. is a partner in a partnership in which the Debtor is a general partner;

c. is an "insider" of the Debtor, as that term is defined in section 101(31) of the Bankruptcy Code;

d. presently represents a creditor of the Debtor, or a person otherwise adverse or potentially adverse to the Debtor or their estate, on any matter that is related to the Debtor or its estate; or

e. has any other interest, direct or indirect, which may affect or be affected by the proposed representation.

5. To the best of my knowledge and based upon the information presently available to me, the Firm is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code.

6. The Firm has agreed to act as counsel to the Debtor on a general retainer, and to be compensated on an hourly fee basis for services rendered and be reimbursed for its actual expenses incurred in connection with its services, in accordance with

sections 327(a), 328(a), 330(a) and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules and any orders of the Bankruptcy Court. The current hourly rates of the firm are $530-$590 for partners and $275 for paralegals.

7. Further, because of the circumstances of the case and the services that will be required especially over the next several weeks, I informed the Debtor that the Firm would be willing to represent the Debtor only if the Court approves the payment of a post-petition retainer in the amount of $20,000, to be applied to the Firm's fees as approved by the Court.

8. The Firm shall apply to the Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and Orders of the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
April 7, 2016

/s/ Robert N. Michaelson
Robert N. Michaelson

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11
UBB PROJECT LLC *dba* ROOMR,	:	Case No. 16-40590 (ESS)
	:	
	:	
Debtor.	:	

ORDER (i) AUTHORIZING THE RETENTION AND SUBSTITUTION OF RICH MICHAELSON MAGALIFF MOSER LLP AS COUNSEL FOR THE DEBTOR, EFFECTIVE AS OF APRIL 5, 2016, AND (ii) AUTHORIZING THE DEBTOR TO PAY A POST-PETITION RETAINER

Upon the application dated April 7, 2016 (the "Application") of UBB Project LLC (collectively, the "Debtor"), for an order authorizing the retention and substitution of Rich Michaelson Magaliff Moser LLP (the "Firm") as its general bankruptcy counsel, effective as of April 5, 2016, and to authorize payment of a $20,000 retainer to the Firm; and upon the Declaration of Robert N. Michaelson sworn to on April 7, 2016; and it appearing that sufficient notice of the Application has been given and that no further notice need be given; and the Court being satisfied that (i) the employment of the Firm is necessary and in the best interest of the Debtor's estate, (ii) the Firm has no interest adverse to the Debtor and its estate, and (iii) the Firm is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code; and after due deliberation, and sufficient cause appearing therefor; it is

ORDERED that the Application is granted and approved to the extent provided herein; and it is further

ORDERED that, pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Rule 2014 of the Federal Rules of Bankruptcy Procedure, the Debtor is authorized to retain the Firm under a general retainer as its attorneys in this chapter 11 case effective as of April 5, 2013; and it is further

ORDERED that, pursuant to 11 U.S.C. § 363(b), the Debtor be, and hereby is authorized and directed to pay to the Firm a retainer of $20,000, to be applied to fees and expenses as approved by the Court; and it is further

ORDERED that the Firm shall be compensated at its customary hourly rates in effect at the time its services are rendered, in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, applicable Bankruptcy Rules, the Local Bankruptcy Rules and orders of the Court, guidelines established by the Office of the United States Trustee, and other such procedures as may be established by order of this Court; and it is further

ORDERED, that ten business days' notice must be provided by the Firm to the Debtor, the United States Trustee and any official committee prior to any increases in the rates set forth in the Application, and such notice must be filed with the Court; and it is further

ORDERED, that to the extent the Application or any other document is inconsistent with this Order, the terms of this Order shall govern.